IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

- - - - - - - - - - - - - - - - - - - -

ROYCE SOLOMON, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. AMERICAN WEB LOAN, INC., et al., Defendants.	CIVIL ACTION NO. 4:17cv145

- - - - - - - - - - - - - - - - - - - -

TRANSCRIPT OF VIDEO TELECONFERENCE PROCEEDINGS
(Motion Hearing)

Norfolk, Virginia

November 4, 2020

BEFORE: THE HONORABLE HENRY COKE MORGAN, JR.
United States District Judge

APPEARANCES: (Via Zoom.gov)

BERMAN TABACCO
By: Kathleen M. Donovan-Maher
Steven J. Buttacavoli
- and -
CONSUMER LITIGATION ASSOCIATES
By: Leonard A. Bennett
Amy L. Austin
- and -
GRAVEL & SHEA PC
By: Matthew B. Byrne
- and -
MICHIE HAMLETT
By: David W. Thomas
Counsel for the Plaintiffs

O'HAGAN MEYER PLLC
By: Charles K. Seyfarth
Elizabeth S. Turner
- and -
WILMER CUTLER PICKERING HALE & DORR LLP
By: Jonathan Paikin
Molly Jennings
- and -
ROSETTE, LLP
By: Robert A. Rosette
Saba Bazzazieh
- and -
WILLIAMS & CONNOLLY LLP
By: Robert M. Cary
Kathryn E. Hoover
Simon A. Latcovich
- and -
PROSKAUER ROSE LLP
By: Christopher E. Ondeck
- and -
FAEGRE DRINKER BIDDLE & REATH LLP
By: Matthew J. Fedor
Counsel for the Defendants

APPEARANCES (Continued): (Via Zoom.gov)

THE SARRETT LAW FIRM PLLC
By: Drew D. Sarrett
- and -
LANGER GROGAN & DIVER P.C.
By: Irv Ackelsberg
John Grogan
Counsel for Interested Party Diana Butler

MOUNTAIN STATE JUSTICE, INC.
By: Bren J. Pomponio
Counsel for Interested Party Charles P. McDaniel

(Proceedings commenced at 12:00 p.m.)

THE COURT: Counsel, this is Judge Morgan. We have, at last count, 26 people on this line. The plaintiffs may designate one person to speak in their behalf, and the defendants may do the same, and I'm going to ask Mr. Bennett to speak for the objectors, and we'll go in that order.

So the plaintiffs can select whomever they want to speak. I don't want anybody else breaking in without the permission of the Court. So whoever is going to be the spokesperson for the plaintiffs may make their presentation of why the Court should approve the settlement.

MR. THOMAS: Your Honor, good afternoon. My name is David Thomas, and I've been designated to speak for the plaintiffs in this matter.

THE COURT: All right. And you are with?

MR. THOMAS: I'm with MichieHamlett, Your Honor, in Charlottesville.

THE COURT: Okay.

MR. THOMAS: Your Honor, settlements inherently mean compromise. In fact, in the words of this Court, inherent in compromise is a yielding of absolutes and abandoning of higher hopes. Those were this Court's words in *Singletary vs. Sterling Transportation*, and they remain true today.

Any settlement has to be evaluated in the light of not only the best-case scenario, but also the worst. That

means counterbalancing the judgment that plaintiffs could receive if they went to trial and prevailed on all counts, assuming, of course, collectability, with the possibility that if the Court denies approval of this settlement, the defendants will proceed on appeal, and the Fourth Circuit will follow its own precedent in *Big Picture* and declare the defendants an arm of the tribe, which could include extending immunity to Mark Curry.

The settlement presented to the Court for final approval is the same one to which the Court granted preliminary approval and consists of two significant parts.

THE COURT: Well, when the Court granted preliminary approval, it warned counsel that that didn't mean that it was a step in the direction of final approval. I asked for additional information before I would even consider final approval. So the preliminary approval, I did grant, in order to move the case along.

You may proceed.

MR. THOMAS: Yes, sir. And that turns, I think, maybe, to the $65 million cash component of the award. The Court granted preliminary approval based on an interest number that the parties believed to be $492 million based on the closest calculation they could perform at the time.

We have since determined and have put before the Court that the total interest number was actually slightly

below that, 472 million. So the ratio of cash --

THE COURT: What period of time does that cover, that figure?

MR. THOMAS: That covers the class period, Your Honor.

THE COURT: Which is what?

MR. THOMAS: January 1, 2010 until June 26, 2020.

THE COURT: And you're saying the total interest paid on all the loans in the class was 472 million for that period?

MR. THOMAS: Yes, Your Honor. It was 471,900,000 and change but...

THE COURT: Okay. You may proceed.

MR. THOMAS: And, Your Honor -- yes, sir. And that's a recovery of 13.8 percent, which is well within the bounds of what courts have approved for class action settlements generally, but mindful of the Court's instruction during our October telephonic hearing, it is also at or above every other tribal lending settlement approved in this district.

And we filed, as an Exhibit A to our supplemental brief, a table which lays out the other tribal lending settlements that other courts within this district have approved. Of, I would say, primary importance or comparison are three. The first is *Zest Finance*, officially

Turner, et al., v. Zest Finance, Inc., which was a settlement that Judge Novak approved --

THE COURT: You needn't go through those. I'm familiar with those.

MR. THOMAS: Yes, sir. Well, then, I'll skip right over and simply note that in all cases -- *Zest Finance*, *Big Picture*, and even *Gibbs*, with the inclusion, assuming that the $5.5 million additional payment is approved by Judge Payne -- the settlement here is above, by percentage of interest or by recovery per class member where interest isn't available -- this settlement is better than all three of those which have been granted approval.

THE COURT: Well, if you don't know how much interest was paid in the other cases, how do you figure that the percentage is higher? Because you've said in your chart that this is the only Court that required that you disclose what the interest was for the class period.

MR. THOMAS: Yes, sir. Well, we have what we believe is a close approximation in *Gibbs* because that matter proceeded in part into bankruptcy, and so there was an approved claim of $1.33 billion which was agreed to be an approximation for the total amount of interest paid in that case; 1.13 billion for the nation as a whole, plus 200 million for the Pennsylvania subclass.

And that is where we say in that, assuming that's

correct, assuming the bankruptcy court got it right, the total recovery in that case, which, if Judge Payne approves the most recent portion of the settlement, would amount to right about $100 per class member, 105.75 million as against the class of 1,045,000 and change. The settlement here, 65 million is against the class of 606,000.

And so whether you do it as a percentage of interest or on a per-class-member basis, which is all we have in *Zest Finance* and *Big Picture*, the percentage or the average is above all of those settlements.

And, Your Honor, we have to look at it in light of what happens if the settlement here isn't approved. If the Court denies final approval, this case will proceed immediately on appeal. It already is. Appeal has been stayed.

THE COURT: Now, why do you say that it would proceed immediately to appeal if the Court does not approve this settlement? The fact that the Court may or may not approve this settlement doesn't mean that the case couldn't be settled. It may be that it just may not be settled on the particular terms before the Court at this point. Why couldn't the Court refer it to somebody else for mediation, for example?

MR. THOMAS: Well, Your Honor, that makes a couple of assumptions. One, the Fourth Circuit, as I understand it,

has stayed the appeal because approval was being sought in this Court, preliminary and then final. So that assumes that the Fourth Circuit would continue to stay the appeal while this case was sent to a settlement conference.

THE COURT: And of course, your statement assumes that they wouldn't. So we don't know what the Fourth Circuit will do, do we?

MR. THOMAS: You are right, Your Honor; we don't.

THE COURT: Well, I was wondering what the basis was for your saying in your brief that it would automatically go to the Fourth Circuit if the Court didn't approve the settlement before it today, and that is based on the fact that you're assuming that the Fourth Circuit would end the stay if the Court did anything other than approve the settlement, and I don't think that assumption is necessarily correct. I don't think it's necessarily incorrect either. But let's move on.

MR. THOMAS: Yes, sir. And it also requires an assumption that the defendants would agree to go to further mediation, and of course, the Court will have the opportunity to address that question to counsel for the defendants, but if the defendants decline to go to mediation and tell the Court, essentially, we offered everything we were prepared to offer in the three days of mediation that have already occurred, the defendants may very well decide, in light of

Big Picture, to take their chances on appeal, and if that happens --

THE COURT: I wouldn't put too much stock in *Big Picture*. I don't want to hear an argument based on *Big Picture*. Let's talk about other things.

MR. THOMAS: And I take the Court's direction. The part I can't get away from, Your Honor, is that at this point in time, *Big Picture* is controlling law, and while I know the Court has heard some language that maybe it's not or maybe it's subject to reversal, the fact of the matter is there is nothing pending out of Judge Payne's court or anywhere else that indicates that the Fourth Circuit is likely to revisit. In fact, other courts within this district have since applied *Big Picture*, now, in non-tribal lending cases.

THE COURT: As I said, I'm not interested in hearing any more about *Big Picture*.

MR. THOMAS: Yes, sir.

So looking at the cash component, especially in comparison to the other settlements within this district, looking also at the monetary relief with respect to the arguments I anticipate you're going to hear, the reality of it is that the debt relief obtained in this case is at least as valuable, if not more valuable, than those other cases.

THE COURT: I think the objectors pointed out that all of the debt relief, the whole 70 million, applied to

loans which were quite delinquent and probably uncollectable. The parties denied that, but it appears that that was an accurate assessment of the $70 million, I think it was, in so-called debt relief. So let's not talk about the value of debt relief either.

MR. THOMAS: Your Honor, I'll admit --

THE COURT: I think calling that "debt relief" is very misleading. That would never be collected anyway beyond a few cents on the dollar. So that's not of any value.

MR. THOMAS: Your Honor, and with apologies, there is absolutely nothing in the record to indicate that is so. Objectors' counsel has even submitted an affidavit to put the actual weight of sworn testimony behind that argument, and the reality is --

THE COURT: Have you?

MR. THOMAS: Yes, Your Honor, we did. There are affidavits attached to the motion --

THE COURT: How old are these debts? How many days delinquent are they?

MR. THOMAS: Your Honor, it varies within the collection portfolio, but they are, I believe, all more recent than the 210-day-old debt that is sought to be released in, I believe it is *Gibbs*. And therefore -- sorry, *Big Picture*, Your Honor. It would be *Big Picture* in which the loans had to be in default for more than 210 days before

they were eligible for relief.

And the parties in that case, including some of the objectors' counsel and Judge Payne, accepted that there was a value to the debt relief in that particular case.

THE COURT: Well, I don't accept it.

MR. THOMAS: While I understand --

THE COURT: I don't accept it.

MR. THOMAS: Your Honor, the third portion of this settlement, then, is the non-monetary relief, which is to say the changes in practice that the settlement requires of the defendants, and the primary one of which, Your Honor, is that it exits Mark Curry from the business of American Web Loans in its entirety. The outsider is out.

THE COURT: Does he give up any right to receive any payments as a stockholder in American Web because of his resignation? Does he still own stock in it? If it makes any money, will he get paid?

MR. THOMAS: I will confirm that, Your Honor, but I do not -- I believe the answer is no. The entirety of the payments he was receiving from American Web Loans were a consulting contract and a promissory note, both of which the Court heard evidence on during the hearing that we had, and in both cases, his consulting contract has been suspended or canceled, and his note has been suspended as of the settlement and will be extinguished if the Court grants final

approval.

THE COURT: Who owns the stock in the company?

MR. THOMAS: The Otoe-Missouria Tribe, Your Honor.

THE COURT: They own all the stock in the company?

MR. THOMAS: With Mr. Curry's exit, yes, Your Honor.

THE COURT: With his exit. Did he formerly own stock? Has he transferred stock as well as resigned?

MR. THOMAS: Your Honor, I don't know if he ever formally owned stock. I believe -- and I'll check on that as we talk, but I believe the answer is he did not because one of the ways they were depending on an arm-of-the-tribe argument was that Mr. Curry was not an owner of American Web Loans; he simply received payments pursuant to the consulting contract and the promissory note.

And so with the final approval of this settlement, all of those payments stop; Mr. Curry is out of the business. And I'm not going back to *Big Picture*, Your Honor, but Mr. Curry's departure improves American Web Loan's argument that it is truly an arm of the tribe with no outsiders involved in the ownership or operation of the company.

THE COURT: When did he resign?

MR. THOMAS: He resigned effective -- sorry, Your Honor, preliminary approval, June 26, 2020.

THE COURT: In other words, during the entire class period, he had not resigned. He resigned at the day the

class period ended. Is that what you're saying?

MR. THOMAS: Yes, Your Honor, although that's not the relevant inquiry for this.

THE COURT: So what effect would his resignation on June 26 have on the merits of the case, because he didn't resign until he entered the class period?

MR. THOMAS: It would have to do with the Court's ability to exercise jurisdiction over American Web Loans.

If American Web Loans is deemed an arm of the tribe, the Court loses jurisdiction, and with Mr. Curry out, the defendants have an improved argument that they are a true arm of the tribe and, therefore, not subject to this Court's jurisdiction. That was ultimately the holding in *Big Picture*, that the two tribal defendants were not subject to this Court's jurisdiction.

The balance of the relief, Your Honor, is prospective relief. It requires American Web Loans to change their loan agreements, to make full disclosure of interest rates, finance charges, and payment schedules. It prohibits conditioning the loans on automatic electronic payments. It deletes negative credit reporting, and it prevents American Web Loans from selling any of the class members' personal identifying information.

THE COURT: Does it prevent them from selling any of the loans?

MR. THOMAS: The loans that are being forgiven, yes, Your Honor, the ones that are being --

THE COURT: I'm not talking about the ones that are being forgiven. Now, by virtue of promising to tell the debtors what their interest rate is, that complies with the federal law. Now, is there anything in the agreement that makes the loan subject to the state usury laws where applicable?

MR. THOMAS: Your Honor, the answer to that question is no, except that hasn't been a component of any settlement, any private-party settlement before this Court.

THE COURT: Well, I'm looking at a settlement here where the loans for the class period were all forgiven, for the whole class period.

MR. THOMAS: And, Your Honor, I'm not sure which one --

THE COURT: I'm looking right at it. I've got it here.

MR. THOMAS: Yes, sir. And I believe, if the Court is referring to the most recent one, the class period ended 18 months prior to final approval. So the loans that are being forgiven for the class period are loans that, when the Court issued final approval, were 18 months old or older. That is significantly older than the loans in the collection portfolio in this case.

So one can say, yes, Your Honor, all --

THE COURT: Well, wait a minute. Do you put a loan in the collection folder -- you don't do that until it's delinquent, do you, when it's in the collection folder? How long does it have to be delinquent before it goes into the collection folder?

MR. THOMAS: Your Honor, it varies by the -- as I understand it, it varies by the internal loans. It can be anywhere from 90 days to 180 days or more.

THE COURT: Well, the loan could be five years old, and the person is still paying on it, and as long as they keep paying on it, it doesn't go into delinquent, or the collection department, whatever you call it. Right?

MR. THOMAS: Yes, Your Honor. And that is theoretically possible, but if it's true, it would represent a tiny, tiny fraction of the roughly 30,000 loans that are still outstanding that are not being forgiven or canceled in this settlement.

THE COURT: Okay. So the settlement, the only thing the settlement does, as far as those loans are concerned, is it doesn't forgive them, or it doesn't even forgive the usurious interest on them. All it does is require the defendants to notify them how much interest they're paying in accordance with federal law.

So it doesn't change the interest that they're

charging the people. They're still charging them the same usurious interest on all those loans. Isn't that right?

MR. THOMAS: No, Your Honor, only on prospective loans.

THE COURT: What do you mean "prospective loans"? What are prospective loans?

MR. THOMAS: Loans issued after the date of preliminary approval, Your Honor.

THE COURT: Well, what about the loans that were issued before the date of preliminary approval? Aren't they subject to the same provision in the settlement agreement? I mean, they're not being forgiven.

MR. THOMAS: Well, half of them are, Your Honor. Of the roughly 90,000 loans that were outstanding, being paid on, or were subject to collection by American Web Loans at preliminary approval, half of them, roughly, are being canceled as part of the collection portfolio. The other half were still outstanding.

And my best information is, of those roughly 45,000 that were still outstanding, approximately 30,000 are outstanding as I stand here today. So there were debt cancellations for half of those loans that were outstanding and still being collected upon by American Web Loans.

THE COURT: The half that they were getting ready to write off, correct.

Okay. Let's move on to another topic.

MR. THOMAS: I don't believe that's true, Your Honor, because that is not in the record at all. I understand that somebody has argued that fact, but the cancellation that is in this settlement, Your Honor, is, frankly, better than the cancellation achieved in all of these other cases in which the loans being forgiven were 18 months, two years, and three years old.

And all of the other courts gave weight to the value of that settlement, and certain counsel in this hearing argued to the Court that there was value in the forgiveness of those 18-month, two-year-old loans.

THE COURT: Well, based on what you've told me, I don't think there's much value in those loans. So let's move on to another topic.

MR. THOMAS: Yes, sir.

And so, then, the balance of the non-monetary relief, Your Honor, I've already mentioned that it will not be required to preauthorize automatic withdrawals.

THE COURT: Well, what about the people that have already authorized it? Is that canceled as to those people?

MR. THOMAS: For the existing loans, Your Honor, as of the preliminary approval?

THE COURT: No. For the loans that predate the preliminary approval. Are those --

MR. THOMAS: And that are not being forgiven?

THE COURT: Right.

MR. THOMAS: I don't believe so, Your Honor, because I don't believe this Court has the power to force a change in contracts between the parties, in the same way that we can't change interest on future loans. That's just something that is not within the power of private parties before this Court.

THE COURT: A simple "no" would have done.

MR. THOMAS: Yes, Your Honor, but I didn't think a "no" was a fully truthful answer because saying "no" because there's no power --

THE COURT: Well, there's no power at this point, no, but if the case is tried, there would be power.

What about your fees? How did you compute your fees?

MR. THOMAS: Yes, Your Honor, we used 23 percent of the common fund.

THE COURT: Of what common fund? What fund?

MR. THOMAS: Yes, Your Honor, the 65 million in cash and the 76 million in debt relief. Although we place the value, through expert affidavit, on the non-monetary relief, we are not seeking any award based on the value of the non-monetary relief. So it is just on the two monetary components of the settlement agreement.

THE COURT: Well, the settlement I'm looking at, the

attorneys' fee was 5 million and some -- the attorneys' fees and costs were 5 million and some. Why is this case worth so much more? Because it doesn't grant as much relief.

MR. THOMAS: Would Your Honor be willing to disclose what that settlement agreement is?

THE COURT: Well, I don't know what is a public document and what isn't. I've got information from the Court in Richmond on various cases. I don't know what is public and what isn't.

But did you compute a lodestar figure for the time that you spent on this case?

MR. THOMAS: Yes, Your Honor, we did. The lodestar crosscheck in this case is 3.46, which I would note to the Court is less than the 3.86 that Judge Novak approved in *Zest Finance*.

THE COURT: What do you mean by 3.46?

MR. THOMAS: The lodestar multiplier is 3.46 on our requested attorneys' fee.

THE COURT: You mean 3.46 times the lodestar? Is that what you're saying? I don't understand your terminology.

MR. THOMAS: Yes, I'm sorry. I misunderstood the Court's question. Yes, there was $9,377,236.30 in attorneys' fees, which times 3.46 comes out to the requested attorneys' fee as the crosscheck, but it was calculated based on

23 percent.

THE COURT: Where does that attorney fee -- where does it come from? The monetary, it's subtracted from the cash relief of the 65 million? Is that where it comes from?

MR. THOMAS: Yes, Your Honor, it is paid out of the cash portion of the award.

THE COURT: Okay.

MR. THOMAS: Your Honor, and like I said, I would note that the lodestar -- the multiplier is below that which Judge Novak approved, and even at 50 percent of the total cash, that brings it in line with Judge Trenga's decision in *Lumber Liquidators*, puts it below the District of South Carolina's opinion in *Case vs. French Quarter*, and is similar to that approved in *Kidrick*, which is out of the West Virginia District Court, Your Honor.

THE COURT: All right.

MR. THOMAS: And I'm happy to run through the requested expenses, Your Honor. They are $421,735. They are laid out in the affidavits, the bulk of which are the mediation costs and then other costs associated with this matter. So I'm happy to go into it in more detail if the Court has particular questions about it.

THE COURT: No. I don't think we need to deal with costs at this stage.

MR. THOMAS: Yes, sir.

And then, finally, we are requesting service awards for each of the four named plaintiffs of $5,000 apiece, which is well within the range of service awards previously approved in this district.

THE COURT: All right.

MR. THOMAS: And so, Your Honor, at the end of the day, we're asking the Court to enter the final approval order submitted to the Court -- it's at ECF 456-1 -- to overrule the objections, certify the class for settlement purposes, award counsel a fee of 23 percent of the total settlement -- total monetary settlement value, costs, as mentioned, with service awards.

Your Honor, I'm happy to answer any other questions that the Court might have at this point.

THE COURT: I don't have any other questions at this point. I'll hear from whomever is speaking for the defendants.

MR. THOMAS: Thank you, Your Honor.

MR. PAIKIN: Good morning, Your Honor. This is Jonathan Paikin. I represent AWL, and I've been designated to speak on behalf of the defendants.

Your Honor, there's been a substantial amount of paper that's been submitted in connection with plaintiffs' motion, and I just wanted to make three points from the perspective of the defendants.

The first is that it's important to know that the parties' negotiations, as we were going through mediation, were guided by this Court's rulings on the motions for immunity, to compel arbitration, and to dismiss.

Front and center throughout those -- throughout that mediation was plaintiffs' insistence that part of the deal satisfy the concerns that were raised by the Court. The settlement does that, and let me explain the three ways that it does.

The first is, putting aside -- and I understand Your Honor does not want to address the *Big Picture* decision. Putting aside the *Big Picture* decision and going back solely to what was then the Tenth Circuit *Breakthrough* decision, which was the --

THE COURT: Well, the *Big Picture* decision predated the settlement negotiations in this case. Is that right?

MR. PAIKIN: I believe the *Big Picture* decision came down in the middle of settlement negotiations.

THE COURT: You mean during the three days that you were mediating?

MR. PAIKIN: The parties had been talking for a very long time --

THE COURT: Did it come down before the three days you spent with the mediator?

MR. PAIKIN: Yes, it did.

THE COURT: All right.

MR. PAIKIN: But even putting aside *Big Picture*, Your Honor, and just applying the test, the immunity test that this Court applied in its decision denying immunity, the settlement satisfies the concerns that the Court raised in its decision, and specifically, the Court expressed concerns over the structure, ownership, and management of the company, and expressed concerns about the financial relationship between the tribe and the company.

And one of the things that this settlement does is address and, I believe, satisfy the concerns that were raised. You asked earlier about the ownership of AWL. The Otoe-Missouria Tribe has always owned AWL. They have always owned it from the beginning, 100 percent. Mr. Curry has never been a stockholder of AWL. The relationship with Mr. Curry --

THE COURT: Is that the same relationship he had with the lender in the -- well, what is this settlement? The one that Judge Lauck is involved with?

MR. PAIKIN: I believe that that was the *Gibbs* settlement, Your Honor, and I believe Mr. Curry in that --

THE COURT: I think that Mr. Curry's involvement was with Mobiloans?

MR. PAIKIN: I believe that Mr. Curry had -- in that settlement, Your Honor, Mr. Curry had -- one of his companies

had a consulting relationship with Great Plains Lending, which was one of the defendants in that case.

THE COURT: The same type of consulting agreement he had in this case?

MR. PAIKIN: I don't know the details but --

THE COURT: You don't? You represented him, didn't you?

MR. PAIKIN: No, Your Honor, I have never once represented Mr. Curry.

THE COURT: Didn't your firm represent him in that case?

MR. PAIKIN: No, Your Honor. My firm is WilmerHale. We did not represent Mr. Curry. Mr. Curry was represented by Williams & Connolly and is represented by Williams & Connolly here today, as well.

THE COURT: Okay. Well, maybe they can tell me whether it was the same or substantially the same agreement, consulting agreement.

MR. PAIKIN: I believe that the key -- the key point I want to make here is that, as part of this settlement, Mr. Curry will have no involvement in AWL going forward. As was already discussed, he resigned as CEO. He resigned from the board. The promissory note and the consulting agreement, which are the contractual relationship that Mr. Curry had with the company and that this Court spent a lot of time

examining in your decisions, those have been suspended, and they will be terminated on the effective date of the settlement.

THE COURT: Well, I know, but the thing is that they were in effect during the class period. So canceling it when the class period is over doesn't affect what was going on during the class period.

MR. PAIKIN: Yes, Your Honor. And the point that I'm making here is that the concern that Your Honor expressed about Mr. Curry's involvement, one of the areas of relief -- and this was a major concession on Mr. Curry's part -- is that he is not going to have any involvement in the company going forward. So going forward, this entity, AWL, is going to be, as it always has been, a wholly owned tribal entity, but now Mr. Curry is going to have no involvement in the company whatsoever.

The point I'm trying to make, Your Honor, is that we, in structuring what the conditions of the settlement would be, included as part of that that Mr. Curry would have no involvement. We can't change the past, Your Honor, but we can change the future. And it's part of this settlement that that was a requirement.

The second way we address Your Honor's concerns, you had concerns about the arbitration agreement and whether there was a prospective waiver of federal rights. The

defendants believe that there never was, but to address Your Honor's concerns, the language has been clarified to make 100 percent clear that there's been -- that there's no prospective waiver of federal rights. So we addressed that concern.

Other modifications -- and these are laid out in some of the plaintiffs' papers -- concern with other issues that were addressed; EFT payments, disclosures, and the like.

The main point I want to make to Your Honor is that, front and center, as we were negotiating this mediation before with a mediator, your decisions were guiding much of the conditions that the plaintiffs were negotiating for, and at the end of the day, the settlement that we have reached, if you were to decide the initial set of motions that were before you back in February, based on the state of facts, and applying only those standards, we believe we would prevail because this settlement satisfies the concerns that the Court raised.

The second big issue I wanted to -- big point that I wanted to make is that, at the beginning of this case, Your Honor, and still today, there are fights among various plaintiffs groups as to who is going to be in charge of this litigation, who is going to be setting the course, who is going to determine how to negotiate the settlement.

Our very first appearance before Your Honor, that

was the date of play, and one of the first things that the Court did was it appointed interim class counsel under Rule 23(g)(3). At that time, defendants took no position as to who the Court-appointed settlement class counsel should be. I have great respect for Mr. Bennett, great respect for Mr. Thomas, and all of the plaintiffs' lawyers here.

But the defendants' main point was that we needed to know who we should deal with, who should we negotiate any kind of settlement with on the other side, and the Court appointed three firms -- the Berman Tabacco, MichieHamlett, and the Gravel & Shea firm -- and we relied on the Court's appointment. That's why we spent months and months negotiating with them, and the settlement reflects that.

I raise that today because I think it's important that we were operating in good faith to reach a deal with the lawyers that the Court appointed here and invested with the expertise that they have in this area, and we reached the settlement. Tradeoffs were made. Different plaintiffs' lawyers may have made different decisions; clearly, Mr. Bennett would, but Mr. Bennet is not the Court-appointed settlement class counsel here.

And so I just want to make that point, that we have negotiated with the lawyers that Your Honor appointed for that purpose.

The last, third point that I want to make is to

harken back to what Mr. Thomas said, that the settlement is a compromise. And I think that's important to keep in mind here. There's an old saying that in any good compromise, nobody is happy, and I can tell you that is true from the defendants' perspective as well.

Three points, Judge:

One, defendants are paying more money than any other settlement in the Eastern District of Virginia for a case like this. It's notable that of all of the issues that the objectors have raised, not one of them has suggested that the amount of money is inadequate. In fact, Mr. Bennett said in his supplemental filing that plaintiffs are to be commended and that $65 million is a lot of money.

So, Your Honor, there is no settlement in all the papers that have been pointed to that have this amount of money in it.

Second point:

When we agreed to that amount of money, that was before COVID. That was before the world changed and we had this pandemic. Candidly, Your Honor, the deal almost fell apart because of the pandemic.

One of the reasons why there was a whole nother round of negotiations in front of Judge Phillips, who was the mediator in this case, is because we were briefing issues of commercial impracticability and force majeure and the effect

of trying to be able to fund and meet that obligation in the face of the economic challenges.

The deal has held together. We've continued. We're moving on, but I think it's important for the Court to understand that not only is this more money, but that this is a lot of money for the defendants to be paying.

The third point I want to make -- and Your Honor has a lot of questions. You focused on the interest payments and the amount of money that has been paid, but that's not the question of legality that's before the Court. That is not what the Fourth Circuit says matters in cases like this.

The question of the legality of the loans turns on whether or not the company is a tribal sovereign entity that is making those loans. That's the question. And let me just quote from the *Williams* case -- this is from the Fourth Circuit -- because I think it's an important quote. This is at 929 F.3d Page 185.

The Fourth Circuit said: "An entity's entitlement to tribal immunity cannot and does not depend on the Court's evaluation of the respectability of the business in which a tribe has chosen to engage. Accordingly, the potential merit of the borrower's claims against the parties in that case and the lack of a remedy for those alleged wrongs does not sway the tribal immunity analysis. It is Congress, not the Courts, that has the power to abrogate tribal immunity."

Broadly speaking, Your Honor, this is a tribal entity. Where I started, we've made changes, changes to the company, to make it even more clear that it's subject to immunity. And in light of *Big Picture*, if this case were to go up on appeal in your decision, we believe that the Fourth Circuit would apply the same standard that it did there and find that this company was a tribal government entity that was issuing loans and is entitled to all the immunity.

The federal government sits on top of the state and sits on top of those tribal entities, but the federal government, Congress, has not acted to impose a federal usury law, and so as the Fourth Circuit said, it is for Congress, not the Courts, to abrogate that tribal immunity.

Why does that matter? Because, Your Honor, the interest that was paid, that relief, that's not the right question. If we go forward, at the very least, there's a substantial risk that the plaintiffs will recover nothing here and that nobody will ever reach the question of the amount of interest because the Court, the Fourth Circuit, will find that this was a government entity that was issuing the loans, entitled to immunity, and the officers that were working for that company are similarly entitled to immunity.

So the real question, Judge, that the plaintiffs are facing is, not whether they could recover $471 million, but very much a high likelihood that they're going to recover

zero dollars. That's why I can tell you that the defendants are not particularly happy with this settlement and having to pay $65 million.

We entered into an agreement with plaintiffs. We contractually agreed that we would come here today and that we would support the settlement, and I'm here to say that we do support the settlement. We join with the plaintiffs in their motion and ask the Court to approve it.

Thank you, Your Honor.

THE COURT: All right. I designated Mr. Bennett to speak for the objectors because I found his brief to be the most persuasive.

So, Mr. Bennett?

THE CLERK: Mr. Bennett, you're on mute.

MR. BENNETT: It was the most persuasive point I was going to make, Judge, is the one I've just said on mute.

What I was going to begin with, Your Honor, is that, if I could initially address a question that was posed that Your Honor then asked of counsel and that sort of defines what I think should happen.

And when I say "I," that means I've had to talk to a lot of people. I've had to talk to the objectors; it may be that I've talked to other people besides the objectors. And the suggestion that defense counsel has that we're trying to take the case over, he knows that to be flatly wrong for

reasons I'm not, because of the mediation privilege, able to share.

We, the objectors which I've had to negotiate with, we know each other from other cases, from -- they're all members of the National Association of Consumer Advocates, and it's taken arm-twisting to get them on the same page.

I have negotiated previously with the Tribe's counsel, with Jonathan Paikin, who negotiated, in one of the Judge Lauck *Think Finance* cases, a deal that eliminated the tribal lending entity, released all of the debt, and gave all of the assets of that tribal lending entity to the Tribe.

I've negotiated with Mr. Seyfarth, who is also one of the tribal defense lawyers. Mr. Seyfarth, in fact, in the recent settlement that is pending before Judge Lauck, but which she's not yet approved, in the *Sequoia* settlement, his client, a debt buyer, has agreed to give up the couple hundred millions of debt that was purchased and collected by the debt buyer, debt which none of us are seeking to value, and never have in any of our cases, for purposes of a fee; ever, not one case. But hundreds of millions -- Mr. Seyfarth was also involved in other of these cases.

Mr. Cary is an exceptional lawyer, who represents Mr. Curry, which is a total and distinct entity. He and I worked together, Judge, to negotiate Mr. Curry's kicking in $10 million in the *Think Finance* settlement. In that

instance, he was not, like here, a major principal. He was a side actor. The *Think Finance* entities were the equivalent of Mr. Curry here, and he paid the 10 million. He was a fantastic negotiator and advocate. But we know these people.

Mr. Rosette, who you may not know, Mr. Rosette is one of the nation's top tribal attorneys. He and I have negotiated multiple matters, and I'm very confident we'd be able to here.

So what I'm asking, what I've got the objectors to agree to do, and I would challenge defense counsel to contradict, that if we -- if this settlement is not approved and you send this to Judge Novak, Judge Krask, who is our Magistrate Judge, you tell all the parties, "Work it out," stay this case for however long it takes to get a date with one of the -- with either the Magistrate Judge or Judge Novak, and you let us try to fix this in a way that solves fatal conflicts, not one of which was addressed by counsel; the fact that a significant percentage, a majority of the class, maybe, gets neither debt relief nor cash. They're not even eligible for it.

You let us fix this, and I promise you -- I'm on the record -- I come back and I tell you how much value that I've produced and I show you my time, I will do what I've done in other cases, like before Judge Brinkema, and I will on the record donate it to a public-interest source. So nobody on

my end, none of the objectors and none of the Virginia people, are trying to take over this case.

Now, the issues -- Your Honor, the challenge here, I think there are two things that are being missed in this discussion, and they're not raised at all. Mr. Thomas, I think this is probably his first final approval hearing. I think he did a great job.

But there are two things at issue. Number one, there are multiple defendants. Mr. Curry, as you noted -- when you asked Mr. Paikin if he represented Mr. Curry, he said no. It's true. He represents the tribal defendants. Mr. Cary represents the moneyman, the person that can fund the settlement, that was to get 200 million, roughly, dollars out of this deal.

And if you do what we've done in these other cases, like in *Think Finance*, we only had a limited release, where all told, in total cash, we're coming up on $100 million already. We have other defendants we're still in litigation with, and each one is responsible to the degree they're responsible.

And *Big Picture Loans*, even after the tribal entity is the only entity that got a jurisdictional stay from the Fourth Circuit before certification, we are now going after where all the money is, where the many tens and tens and scores of millions of dollars are, Mr. Martorello, who is the

equivalent of Mr. Curry. There's no reason why the fact that there is tribal immunity available, possibly, with the right facts, for the tribal lending entity, you have to release everyone else under the sun, including those that have no immunity.

Every single decision that has come before a District Court in Virginia, in the Eastern District of Virginia, of which I'm aware, certainly in the last five, six years -- everyone that I'm aware of to come before the Fourth Circuit, other than *Williams v. Big Picture*, found in favor of the consumer.

We've cited these cases, and I apologize to Ms. Ward. I'm not offering the spellings of the cites here, but they're in our papers, but you have *Hayes vs. Delbert*, our case where we had sued not the tribal lending entity, but we sued the debt buyer and the financier, and the Fourth Circuit, Judge Wilkinson, reversed the grant that Judge Gibney had made of arbitration. And you know how the Fourth Circuit is normally excited about arbitration. They reversed it and found the arbitration clause unenforceable and the class action waiver unenforceable.

And that is true, as well, in *Dillon vs. BMO*, which was not our case. The Fourth Circuit was very harshly critical of the non-tribal entities.

Our recent decisions, which were never addressed

today, in *Gibbs v. Sequoia* and *Gibbs v. Haynes*, were also brought against the non-tribal defendants. You have *Hengle vs. Asner*, *Gibbs vs. Stinson*, that have occurred over the last year in the Richmond District courthouse.

In every instance, the non-tribal party has been found -- has had their attempt to hide within the covered wagon and sneak out of the case in tribal immunity denied or rejected by the courts, both by the District Court and by the Courts of Appeal.

You also have *Gingras vs. Think Finance*, a case that's been cited in this district. *Gingras vs. Think Finance* was a Second Circuit case that said even if you get tribal immunity, the tribe into the entities, that doesn't extend to the tribal officials. And Judge Payne has indicated his view that that is a legal conclusion he believes correct.

And so you have lots of parties that are either not kicking any money in or that do not need to be released, and I think all of us here do a disservice to the value of the class and their $472 million of usurious interest, then statutory claims on top of that, if we ignore the fact that the protections that could be available for Mr. Paikin's client are not available for Mr. Cary's.

The second thing, Judge, is that in none of those settlements did we obligate consumers to release all their

claims, particularly, for nothing. So, for example, in the *Big Picture Loans* settlement that we negotiated with Mr. Rosette, who on my screen is right in the middle of it, to the left box, we negotiated a release which I would bet you these defendants -- I would intelligently bet you these defendants would agree to.

That would not require the release of individual causes of action for consumers unless they got cash. That was the deal that we've structured in these other cases. And so you're comparing apples to pineapples here when you suggest 65 million, because it's what you purchased. And for 65 million, they're purchasing a release of all the individual claims, the West Virginia causes of action, the Virginia usury statute, Pennsylvania -- every statute is released, every RICO claim, everything. Every defense, a consumer couldn't say, "This is not correct, I do not owe this money because the loan is illegal," and assert either a recoupment or setoff, a counterclaim. All of that is released, and it wasn't in any of these comparable ones.

And it's plainly untrue that this is the largest settlement. And I do respect that it's a large settlement, Judge. These cases are hard. And when you have a team like the plaintiffs' lawyers, that this is their first one, that -- they're to be commended.

But you're talking about pricing $470 million of

usurious interest. Virginia, the loans themselves are void, so whatever the principal is. You're not doing anything about the debt buyers who are still collecting and still credit reporting and still doing everything else.

You are requiring consumers to give up all their claims, and so it isn't -- the 65 million, even in raw dollars, is not the largest, because in the *Think Finance*, we're close to 100, and we're still suing. And in the case of *Big Picture*, we could have settled to get a lot more money if we settled Mr. Martorello, but we're litigating, as the dockets that we've cited in our papers show.

Now, even if the Court was motivated to approve this settlement, in the interest of trying to move things along, I have to respectfully do something I have rarely done. In my career here, maybe three times have I appealed district judges. But the conflicts here are so fatal, and that's the argument that Courts of Appeal and the United States Supreme Court are really focused on.

When you take a release from one part of the class and sell that release for nothing as a way to get other people in the class cash, that's a conflict. It's a fatal conflict. It renders the plaintiffs, it renders the lawyers advocating that, inadequate.

And so the best option here is certainly to leave people on their own, to let these consumers continue to

litigate their cases in other actions -- none of which are mine, Your Honor -- because they will get more, they will have the right to prosecute their claim, and they will get zero out of here. The Pennsylvania people, the West Virginia people, our clients -- most of them get absolutely nothing; no debt relief, no cash.

I would footnote a comment for the record here. It is a challenge in our cases to try to estimate and tell consumers how much money they will get. So they know it's $50, it's $1,000. The most I've ever gotten in a class settlement is 4,500 bucks, and I told those people in that case, back before one of my favorites, back -- one of his last cases, Judge Williams, but our notice told the class that assume that it would be much lower than that.

But here, you have -- the lawyers for the objectors have asked the plaintiffs' lawyers, and copied the defendants, to say, How much would our clients get? And no one could tell them. And if they can't tell us, knowing we're going to sit here on Zoom and, Your Honor, tell the Court this, they have no idea how much money anybody would get. Maybe it's the $80, and maybe it's less. Maybe it's nothing.

The other issue is, Judge, we have -- in this particular instance, you have several other points that were made. The plaintiffs' lawyers are no longer -- and I think

this is appropriate -- attempting to sell Your Honor this smoke and mirrors, the Court's words, but appropriately so; we promise we will not commit what is literally a crime. One of these federal statutes, it's a crime to violate it. So you have the defendants saying, We will not break the law further.

You have this statement that, now, to clarify, in the arbitration clause, the defendants are saying that they will acknowledge they have to comply with federal law. They don't acknowledge you have to comply with state law. And frankly, as a consumer advocate who lives this stuff, I would prefer if the contract does not include that statement or the contract says that the defendant doesn't have to comply with state or federal law. The Fourth Circuit has now three times said, in our cases, that's unenforceable, completely.

So it's -- you're not doing any favors to the consumers. That is a term which I am very confident the defendants put in there as soon as our other cases came out of the Court of Appeals. And other than that, here today, there's no attempt to suggest any non-monetary value.

The debt relief, Judge, the papers have gotten very vitriolic. There's a statement in there that I somehow gave money to our party, my political party, and that's why the Attorney General objected to fees. And I will represent to the Court I did not speak to General Herring about this case,

never have, not once, didn't -- that is false, untrue. And I did not respond in papers, and I attempted to tone the vitriol, but I do have to say that.

But you have a team of lawyers here who survived a motion to dismiss and didn't take it up on appeal. I mean, we lost *Williams v. Big Picture* for Williams and went back to the Court and kept fighting. But all these cases you see from us that were before the Fourth Circuit, we fought these cases.

Here, you had a first-file decision by this Court, well-reasoned. I mean, it was certainly quite proper and appointed class counsel to these folks. They survived the motions; on appeal, did nothing, did only very modest deep discovery -- you see the questions you couldn't even get answers to today -- and now claim they have $10 million of lodestar, and from that $10 million, they want to use that to support a percentage of common fund.

And the percentage of common fund is asserted to be the debt relief, the collection portfolio, plus the cash, and I've never heard of that. Debt relief is a coupon, Judge. You have the Class Action Fairness Act. If they're taking a percentage of debt relief, then give them 23 percent of debt relief, if that were somehow possible. That's improper.

And none of the settlements, not one -- we've gotten near total debt relief in almost every single one of those

cases that were in our papers, and not a single time have we priced debt relief to support our fee. We have, in some papers, said there's debt relief, and we say it's obviously not worth 100 cents on the dollar, but it's important that we include that in a term of settlement.

In fact, in the *Gibbs* cases and in the *CashCall* settlements, Judge, our team -- and this is also in the papers -- we committed to continue to go after the debt buyers without getting additional fees, to get relief on behalf of the class members.

Now, if you want -- this question that was posed by Your Honor is whether or not the collection portfolio is, in fact, just charged-off debts, and the response was a suggestion that somebody has lied here, and I resent that. I have not lied. And it's in our papers, and I put it up -- I put it before Your Honor.

But it's at Page 2 of Docket Number 466, and I cite in actual quotes and bold and single-spaced block quote from Docket Number 456-3 and 415-1 where we ask -- where the objectors ask, Where does this come from? And the statement that we were given and that was in the document says, quote -- it was that "The 'Collection Portfolio' consists solely of AWL loans that were charged off and remained written off more than 90 days prior to the date the parties initially negotiated this term."

So 90 days before the date of settlement, assuming -- and that assumes the best. That assumes they're meeting the date of settlement. That would be April 15, 2020. That means the debts were charged off at least -- at least -- 90 days before that, which puts it as December 19, 2019. And to be charged off, typically, you charge off at six months late.

And so if you're talking about a debt that hasn't been paid for six months prior to December 19, 2019, which is in the papers that they gave us, that is valueless. Not even a debt buyer would buy that debt. And the charge-off rate already on these types of loans, Judge, is -- the nonpayment rate is 50 percent. I would bet you the nonpayment rate for that type of loan is zero, statistically zero, anyway.

And we've got a lot of boxes on the screen, and I would challenge anyone if they believe otherwise, to suggest, including Mr. Thomas, to tell me what those matters are worth.

Now, there are other issues, Judge, in our papers. In particular, some of the other objectors -- their clients have unique problems, and I would at least like to mention those, if the Court please.

Certainly, the conflicts issue is the biggest, and it runs -- it permeates the settlement and runs throughout all three of the objector positions.

You have the fact that a number of these people receive no cash. They don't have loans. They don't have debt relief. And so that certainly creates a conflict because you're giving money to the plaintiff because that plaintiff would be eligible to receive a cash payment, and you're not giving it to other class members who are forced to give a broad general release.

There are other matters and other objections, Judge, and they haven't come up in the plaintiffs' or the defendants' position, but I've talked for quite some time, and I would answer any questions the Court may have.

THE COURT: Well, there were tiers of class members in one of these settlements, depending on what state they were in and what relief would be available in a particular state. The way this settlement is structured, there's no way to figure that out, that I know of. I don't know how many states are a part of the class, even. I haven't been given that.

But you've got people from where? West Virginia?

MR. BENNETT: Judge, we have -- the Virginia team has them from Virginia, California, and Connecticut. You also have objectors represented by the same firm that represented the Pennsylvania Attorney General. They represent, in this case, a Pennsylvania consumer, and then you have the legal aid organization, Mountain State Justice,

and its counsel who represent a West Virginia consumer.

THE COURT: All right. I don't have any other questions.

The Court is not going to approve the settlement. There are a combination of problems that the Court has. I don't think the debt relief has any value. The clause that says that they will conform with federal law with respect to certain outstanding loans has very little value. It valued at $300 million.

I don't understand that. I don't think it has anywhere near that value. I don't know how it could possibly have that value. If the total interest they charged was 472 million, how is that going to be worth 300 million? You've got the non-monetary relief adding up to more than the entire interest that you admit to receiving.

I think that to approve this settlement would just be a total loss to the class as well as the objectors, and it does not come anywhere close to equaling the debt relief offered in similar settlements. And I think the attorneys' fee is excessive. By the time you subtract that from the cash, the only real value in the settlement is the cash. Nothing else really has any value.

I mean to say that the non-monetary relief -- I've got it added up here. You've got non-monetary relief which you valued at $700 million, and you only admit to receiving

472 million in interest. Those figures do not compute. It's not even close.

I'm very disturbed about the way that the settlement has been argued and presented. And I don't place the blame on Mr. Thomas, who has to suffer what I have to say, as the proponent on behalf of the plaintiffs, but I think it's not, certainly, all on him by any means. But this is just totally unsatisfactory.

We have a case here which is a hornbook case for relief for borrowers. The Court didn't base any of its reasoning in denying the jurisdictional arguments of the defendants on the type of business the person was in. The Court's rationale had simply to do with what was disclosed in discovery on the issue of jurisdiction.

That amount of discovery didn't take place in the *Big Picture* case because, I suppose, it appeared so obvious to Judge Payne that he ruled as he did, and I think that ruling will eventually be upheld or settled.

You had extensive discovery on the jurisdictional issue, and the Court based its findings on the degree of control exercised by Mr. Curry over the entire operation as well as the amount of money he was receiving as opposed to how much the tribe was receiving.

So it's an entirely different case on the record that goes before the Fourth Circuit in this case than in the

Big Picture case, which is why I made the reference to I didn't think *Big Picture* applied because it was just an entirely different factual scenario that went before the Fourth Circuit.

I can only imagine the cost of trying a case like this. I mean, we've got 26 lawyers, maybe more than that by now, on this call. 26 lawyers. Maybe they're not all lawyers. Maybe some of them are -- but whoever it is, there are 26 meters running.

And so I think that the Court shouldn't push this case in the direction of litigation. The mediation that took place was after the Fourth Circuit decision. So that decision was hanging over everyone's head during that mediation.

With all of the other decisions that the Fourth Circuit has made in this area, I think that that particular case will not carry the weight that the defendants and the plaintiffs think that it will, and it shouldn't carry that weight during negotiations.

I think the best result here would be to refer it to either Judge Krask or Judge Novak for mediation. There's very little discovery that's taken place on financial matters in this case. I would think that the class would want to know the profits that the company made during the class period.

I would want tax returns for the entity, as well as Mr. Curry. I would think that they would want real debt relief. And I think that applying the fee in the way it did and coming up with this -- what did I figure it was? -- about $700 million in non-monetary benefits for $472 million in interest is -- I don't know what adjective to apply to it, but it's certainly not persuasive.

I don't know about Judge Novak's availability. He's a District Judge. Judge Krask is a Magistrate Judge, and the cases I've referred to him, he's done an excellent job, but I don't know what background he has in handling these kind of cases, so unless somebody has some information that he's handled cases of this nature before, I think the first thing I should do is see if Judge Novak can schedule a mediation.

As somebody says, there's no reason for me to schedule further mediation if the defendants are not going to show up for it, if they're just going to ask the Fourth Circuit to act.

I think it's just frightening to think how much it would cost with all these lawyers involved on the defense side, but to approve this settlement would be totally unfair to the class. As counsel points out, people would receive no benefit, but yet they would release all their claims.

MS. DONOVAN-MAHER: Your Honor --

THE COURT: Those that do receive some -- no. No.

MS. DONOVAN-MAHER: Thank you.

THE COURT: Those that do receive something, it would be a pittance. It would be like the postcards I get in the mail that say if I can send something in, I'd get $15 because of something I bought or some stock I bought at a certain time. I mean, to approve this settlement would make virtually every member of the class a loser. They really have very little to lose if this case goes to litigation.

So that's why I'm suggesting that it should go to -- well, my first option would be Judge Novak. If nobody objects, I'm going to contact Judge Novak and determine what his availability would be to talk about this. But I really don't think enough discovery has taken place on the financial side of this case. I just don't know how somebody could take the information that's currently available and do a good job in mediation, but I'll leave that to the mediator.

Does anybody object to my calling Judge Novak? Hearing no objection, I'll call Judge Novak and determine his availability.

All right. That will conclude the hearing.

(Off the record at 1:23 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____/s/_____

Carol L. Naughton

November 6, 2020